Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

WILLIAM B. COOK,
Petitioner,

v.

CLEVELAND STATE UNIVERSITY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

1) This Court has never ruled on the marketability of title (where the buyer is free from the hazards of litigation) on property that is within the developmental plans of a state agency or the urban renewal plans of a city. Has the seller lost marketability, and is that a taking in the Constitutional sense? By stipulation at trial, the subject property is in the CSU developmental plan since 1966 and Cleveland's urban renewal since 1970 but both entities forgot to register these title clouds with the county recorder as required by Ohio law. That alone Cook believes is a taking in Ohio. Do you agree?

2) It is well settled in Cuyahoga County, Ohio (by Lower and Appellant Court ruling) that title insurance companies will not insure over the developmental plans of government or the designation of urban renewal by a city leaving the title unmarketable. The Federal Trial and Appellant Court has ignored those rulings. Is this a taking?

3) When a FDIC bank financing is changed from the ordinary due to the probability of eminent domain by government, is that a taking? In Ohio, the bank losses the land as security, and the mortgage goes to the jury verdict. If the verdict is short, the bank goes after the landowner personally. No wonder banks will not finance in those developmental areas. Also, private developers must acquire all land needed for the project first or face higher prices later, the same should be true for CSU. Do you agree?

4) When a state agency violates Ohio Law and Ohio Administrative Code, as does a city, is that a taking?

5) This Court has not ruled on "freezing" of private property and delay of prosecution of eminent domain as it has with Life and Liberty of the Constitution, Also the Appellant Court ruled Cook did not have a right to an attorney, but the Constitution does not distinguish between Life, Liberty, and Property. As the Miranda rights state, if you want an attorney and cannot afford one, one will be appointed by the court to represent you. Do you agree and at what point is he/she appointed?

6) Plotting and planning by government is over the moment government does the first thing to implement that plan/blueprint. It may be the first land purchase, financing in place, or even digging a hole. Is that when the clock starts to run? It is government's job to provide a good excuse for delay of prosecution so as to not offend the Constitution? Do you agree?

7) Do you agree that the Court of Appeals was wrong in saying that CSU did not do some action to appropriate the property. In 1982 CSU twice appraised the property, in 1984 again twice appraised the property and sent the James Kolpein letter offering to buy the property for no more that $130,000.00 and if not accepted, promising eminent domain. In 1988, again twice appraising the property. Also the letters and meetings with CSU re: property purchase. Cook has a duty to inform a buyer of this information as well as the map issue, rendering the title unmarketable. The property has been in the developmental plans of CSU since 1966 and also in a urban renewal area of

Cleveland since 1970, further action rendering the property unmarketable and both still in effect today. Do you agree?

8) A conflict exists between the First Circuit Court of Appeals and the Sixth Circuit Court of Appeals. In *Urbanizadora Versallies v. Migel A. Rivera* , 701 F. 2d 993 (1982) The First Circuit Court says #2 Constitutional law, "freezing" of property owner's land for 14 years by reserving land for future public improvements without actually condemning land amounted to unconstitutional deprivation of property," A map was also a issue in that case. The Ninth Circuit Court of Appeals agrees in *Carson Harbor Village v. City of Carson,* 37 F. 3d 468 (1994) with the First Circuit Court. The Sixth Circuit doesn't agree in my case. Which Circuit Court is right?

9) Joe Sidotti of the city of Cleveland testified that Cleveland Ordinance 1577-66 (1966) and 199-88 (1988 codified as 341.01 to 341.06) affected the legal rights of landowners because if property owners wished to develop their property, they would have to subject to "certain design controls to maintain uniformity and consistency" in the urban renewal area of Cleveland and the redeveloper is CSU. Do you agree this is a taking or at least starts the clock running?

10) When CSU delays eminent domain, how does the landowner get paid relocation and expenses as is guaranteed in 42 USC 4601 to 4655, the Uniform Relocation and Real Properties Acquisition Act. Cleveland got and accepted Federal HUD monies by city Ordinance 1967-68 on 1/28/1969 to plan the

urban renewal area and CSU is the named redeveloper in section 13 of the Ordinance by the city.

11) Ohio is a Torrens Act state requiring recording of encumbrances against real property with the county recorders office, which did not happen in this case. (*see* Ohio law 5301.25 "recording ..or encumbrance of lands". Developmental plans of the State and urban renewal are encumbrances due to the real possibility of CSU taking the land for the development. Do you agree?

12) On Wednesday November 11, 1998, CSU knew in the deposition of Cook, that the subject property was in foreclosure and set to be sold by the Sheriff (the sale was 5/21/2000) and did nothing to stop the sale even knowing that Cook did not have a marketable title. Cook lost the property and his home because the bank required a second mortgage on his home in the event CSU did acquire the property for less than the mortgage amount. Eminent domain is adversarial. CSU wishes to pay as little as possible and Cook wishes to get as much as possible. This offends the definition of marketable title where the buyer is free from the hazards of litigation. The bank did not bid on the property knowing that if it was the successful bidder, it could not deliver a marketable title and had a duty to disclose to a new buyer or would stand in Cook's place to wait for CSU. Is this a taking?

13) How does the business owner get paid good will for his business if CSU delays prosecution but continues with the developmental plans including taking of Cook's customers? I believed you settled the issue in *U.S. v. Miller*, 318 US 798 #1 (1220 full and perfect

equivalent in money and #7 (137) used and treated as an entity. But the CSU appraisers never set a value on loss of business or good will to the business, parking income that the business received monthly, moving expenses, lost customers and more. Without delay, I could have posed the issue to a jury. Do you agree?

14) Are the violations committed by the CSU administration a violation of the Hobbs Act, Title 18 USC 1951, and what about the oversight of the State Administration? Defense attorney Synenberg did respond to Cook's motion to add CSU as a defendant in the foreclosure action as is allowed under Ohio law. By not doing eminent domain to stop the Sheriff's sale, Cook believes that is theft of real property by the State. Do you agree?

15) When the State of Ohio passes a budget giving CSU money for land acquisition, Cook claims public knowledge of this further proves the State and the CSU commitment to the developmental project, another reason for no delay of prosecution. Cook is within the "Green Line" of CSU since 1965. Is it the passing of the budget or when the first dollar is received that starts the clock running? Do you agree?

16) Cook believes that the actions of CSU adversely affected other land owners in the developmental plan including those already purchased by CSU. Can these people still look to CSU for relief today?

17) Cook is willing to accept 1984/1985 as the taking date. Is that FAIR? As pro-se, am I entitled to legal fees, expenses and how much?

18) CSU did produce, publish, and distribute at least 250,000 faulty color maps over 12-15 years showing the subject property incorrectly as part and parcel of the CSU parking lot M. Those maps were also displayed on 12-15 outdoor bulletin boards through out the campus causing CSU parkers to use the subject property in error. Is this a taking?

Parties to the Proceeding

Petitioner

William B. Cook

Respondent

Cleveland State University

Table of Contents

Page(s)

Questions for review i

Table of contents viii

Table of Authorities ix

Opinions Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

Statement of Case 2

Reasons for Granting the Writ 4

Conclusion 30

Appendix

U.S. District Court Northern District of Ohio Eastern Division (Judgment) (case no. 1:98:CV 0351) Judge Lesley Brooks Wells . . . . . app.1a to app.2a

U.S. District Court Northern District of Ohio Eastern Division (Findings of Facts and Conclusions of Law) (case no. 1:98:CV 0351) Judge Lesley Brooks Wells . . . . . app.3a to app.16a

U.S. Court of Appeals for the Sixth Circuit (Order) No. 00-3972 Judge Ryan, Cole, and Marbley . . . . . app.17a to app.21a

Table of Authorities

Cases

Page(s)

Amens v. city of Dearborn 718 F. 2d 789 (1983) 26

Archer Gardens v. Brooklyn Center 468 F. Supp. 609 (1979) Quoting Richmond Elks Hall Ass. v. Richmond Redevelopment co. 561 F. 2d 655 (1977) 26

Armstrong v. U. S. 364 US 40, 4 L. Ed. 2d 1554 (1984) 18

Carson Harbor Village v. city of Carson 37 Federal Reporter 3d 468 (1994) 27

City of Brookpark v. Bence (city of Cleveland) Cuyahoga County Probate Court #1096255 (1994) 8

Dunbar v. Toledo Plan Commission 662 N.E. 2d, 8 (1976) 26

Easton v. Solon 598 F. Supp. 1505 (1984) 27

Eight and Walnut v. Public Library of Cincinnati 385N.E. 2d 1324 (1977) 16

First National Bank v. Cook Cuyahoga County Common Pleas Court #335310 (2000); Also see Deficiency judgment vol. 2589 pg. 626 of the Cuyahoga County Court of Common Pleas; also see Civil Docket to case #335310 CSU response to being added to foreclosure (6/11/1999) . . . 10

Foster v. Herley 330 F. 2d. 87, 405 F. 2d 655 (aff'd 1964) 26

Group W. Cable v. Florida power corp. 94 L. Ed. 2d 282290 (1987) 5

Hadley v. Clinton County Imports 13 Ohio State 502 (1862) 10

Heidi-Ann Kangresser Et Al. Cuyahoga County Probate Court #1060749 9/18/1991) 21

Hilltop Properties v. State 233 Cal. App. 2d 349 43 California Reporter 152 (1971) 21

Kaiser Aetna v. U.S. 444 US 164,179 (1979) 6

Kruse v. Village of Chagrin Falls 74 F. 3d 694 (1996) . 6

Loretto v. Teleprompter Manhattan 73 L. Ed. 2d 869, 883 (1982) 6

Martin Barriss v. Cleveland 17 ABS 534,536 (1934) . . 26

Noland v. California Costal Commission 97 L. Ed. 2d 677, 692 (1987) 5, 6

Philadelphia Parkway case 250 Pa. 257 / 95 A. 429 (1969) 21

Rockefeller Center Properties v. U.S. 32 Federal Claims Reporter 586 (1995) 23

Ruchelahhause v. Monsanto 81 L. Ed. 2d 815 (1984) . . 5

Sayre v. U.S. 282 F. Supp. 175,176 (1967)
42 L. Ed. 2d 64 11

Shell Oil v. State of Ohio U. Cuyahoga County Probate Court
#974164 1/8/1986 21

State of Ohio v. city of Columbus 667 N.E. 2d 8 (1996) 7

Stern v. city of Cleveland 416 N.E. 2d 636 (1979) . 2, 20

U.S. v. Couch 822 F. Supp 458 (1993) 26

Wallach v. Riverside bank 206 New York 434 (1912) . . 19

Washington Medical Center v. U.S. 54 L. Ed. 2d 188
(1977) 28

8109 Hough v. Cleveland 277 N.E. 2d 90,92 (1971)
. . . . . 2, 3, 4, 19, 20

Trial Testimony

Pg. 52, line 1 to pg. 53, line 18 13
Pg. 63, line 10-12 5
Pg. 77, line 12 to pg. 78 line 4 17
Pg. 172, line 21 to pg. 193, line 20 21
Pg. 177, line 5-19 22
Pg. 179, line 5-22 . . . . . 22, 25
Pg. 180, line 16-18 23
Pg. 186, line 2-9 22
Pg. 191, line 17-22 22
Pg. 193, line 14 to pg. 194, line 9 23
Pg. 197, line 6, to pg. 198, line 13 22
Pg. 199, line 11-17 22
Pg. 202, line 19, to pg. 203, line 11 23

Pg. 208, line 14-16 12
Pg. 209, line 12 to pg. 210, line 25 . . . . . 9, 12
Pg. 213, line 4 to pg. 214 line 2 15
Pg. 219, line 9 to pg. 223, line 7 17
Pg. 230, line 8-11 23
Pg. 237, line 6-17 5
Pg. 238, line 1-8 5
Pg. 241, line 18-23 5
Pg. 252, line 1-7 5
Pg. 255, line 23-25 5
Pg. 277, line 2-9 . . . . . 13, 23
Pg. 398, line 19 to pg. 400, line 5 7
Pg. 427, line 9-22 11
Pg. 445, line 24 to pg. 446, line 17 11
Pg. 449, line 1 to pg. 450, line 6 11
Pg. 478, line 6-24 5
Pg. 531, line 7 to pg. 534, line 6 7
Pg. 707, line 16 to pg. 708, line 8 . . . . . 7, 13
Pg. 713, line 9-13 7
Pg. 737, line 11 to pg. 739, line 14 5
Pg. 762, line 12 to pg. 763, line 2 8
Pg. 765, line 2 to pg. 768, line 1 . . . . . 8, 22
Pg. 767, line 1-9 25
Pg. 767, line 19-25 22
Pg. 775, line 3-5 . . . . . 2, 4, 22
Pg. 776, line 23 to pg. 777 line 5 22
Pg. 788, line 24 to pg. 789, line 18 8
Pg. 836, line 11-17 12
Pg. 841, line 18-25 12
Pg. 847, line 23 to pg. 848, line 7 5
Pg. 850, line 25 to pg. 851, line 24 24
Pg. 851, line 1 to pg. 857, line 5 12
Pg. 869, line 10 to pg. 871, line 1 13
Pg. 883, line 2-18 6
Pg. 895, line 3-11 5

Pg. 922, line 19 to pg. 924, line 11 9
Pg. 1005, line 3-18 12
Pg. 1035, line 14 to pg. 1037, line 5 29

Trial Exhibits and Legal Books

Affidavit against interest at Cuyahoga County Recorder office, #199912140692 12/14/1999 10
Affidavit against interest at Cuyahoga County Recorder office #200005180676 5/18/2000 10
Bk. 26 American Juris. 2d pg. 594 28
Bk. 37 American Juris. 2d pg. 221 10
Bk. 63C American Juris. 2d pg. 66 28
Bk. 36 American Law Review 3d pg. 753, & ft note 3 . 22
Bk. 37 American Law Review 3d pg. 129 20
Bk. Words & Phrases, Ohio Juris. 3d (K to Z) pg. 791 . 19
Bk. 38 Ohio Juris. 3d pg. 311 29
Bk. 76 Ohio Juris. 3d pg. 13 19
Bk. 77 Ohio Juris. 3d pg. 40-41 16
Bk. 80 Ohio Juris. 3d pg. 104 19
Bk. 80 Ohio Juris. 3d 606, & 587 (same) 16
Civil Docket, 98-CV-000351 #87 10
CSU Controlling Board Requests 1) 12/08/1969 McGee co. 2) 10/31/1985 Shell Oil co. 3) 3/24/1997 Emerson Press co. 17
Defense Exhibit B 11
Exhibit and witness list to 98-CV 000351, plus docket . 10
Gilbert Law Summary (Property) by Jesse Dakeminier pg. 316 19
Kolpein letter to Cook (see Cook deposition by Synenberg in defense exhibit #C 2, 9, 12
Ohio Real Estate- updated by Synek and Harwood 27
Plaintiff Exhibit 1-09,10,11,12,13,14 5
Plaintiff Exhibit 4-107 11
Plaintiff Exhibit 7-9 5

Plaintiff Exhibit 8-25,26,27,28 6
Plaintiff Exhibit 556, & opinion 555 (Vanni) 22
Plain Dealer newspaper article- Chinese Embassy 7
Plain Dealer newspaper article – ski lift accident 7

Cleveland Ordinances

Ordinance 1577-66 17
Ordinance 1967-68 13
Ordinance 968-a-69 . . . . . 5, 13, 16, 25
Ordinance 3018-83 13
Ordinance 199-88 (codified 341.01 to 341.06) 12, 17

Ohio law

103.41-103.47 14
119.01-119.13 29
163.06, 163.09, 163.10, 163.14, 163.16, 163.21 14
163.13 29
163.22 29
163.51-163.57 14
163.59 . . . . . 14, 15, 24
719.011 . . . . . 14, 15, 24
719.31 29
2913.43 18
2913.47 18
3333.071 18
3345.122 18
5301.24 10
5301.25 16
5302.05 28
5302.06 28
Ohio State Constitution—Article I, sec. 19 18
Ohio Administrative Code 5501:2-5-01 to
5501:2-5-06 . . . . . 14, 15, 24

Federal law

U.S. Constitution 5th , 11th , 14th Amendments 1, 10, 11, 23, 26
Title 18 USC 195- The Hobbs Act v
Title 42 USC 4601 to 4655- The 1970 Uniform Relocation And Real Properties Acquisitions Act 14
Title 28 USC 455 30
U.S. Supreme Court rule 20(a) 29
U.S. Supreme Court rule 39(7) 29

Opinions Below

The order of the Sixth Circuit Court of Appeals was filed on June 15, 2001 and is reproduced in App. C at 17a-21a. The United States District Court for the Northern District of Ohio Eastern Decision filed its Findings of Fact and Conclusions of Law and Judgment Entry on July 10, 2000 and are reproduced in App. B at 3a-16a and App. A at 1a-2a.

Jurisdiction

The Sixth Circuit Order was filed June 15, 2001. Petitioner was granted an extension to file the Petition for Writ of Certiorari until November 12, 2001. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1).

Constitutional and Statutory Provisions Involved

Cook claims CSU did violate State code, Ohio Administrative code, and Federal Law, and the Fifth and Fourteenth Amendment of the United States Constitution. There is no question the map issue where a state agency with the power of eminent domain claims use and possession, is a taking under U.S. Supreme Court case law. Being in the developmental area affects financing due to no bank will wish to prove value, or want to wait for CSU to initiate eminent domain if they get the land back. CSU has 11th Amendment immunity and Ohio has no inverse condemnation laws. By not recording the area with the county recorder's office, CSU did commit insurance fraud negating any title policy in the area. The mortgages in the area are worth only the amount of a jury verdict at trial. If that verdict is short, the bank must go after a borrower personalty, after all, eminent domain does perfect title unto the government. CSU released its plans to the media, taking buyers out of the market, further "freezing" the

land. The land went down in value over the years due to CSU being the only buyer. Who will wish to buy for fair market value to eventually face the state in court to try to prove value? CSU admits I am one of nine properties left to buy to complete their development (see Tr. pg. 775 line3-5 and linc24 to pg. 776 line 2) but I am not a high priority to them. Still, being in the plans will freeze the property as does urban renewal. The state controlling board requests prove more freezing. The 8109 Hough case and the Stern case prove an unmarketable title. CSU sends real estate appraisers to value the land and threatens a taking, but no follow through and no letter stating they will not take so I can have a marketable title. At Sheriff's sale, CSU docs nothing, knowing they can do eminent domain at any time to get the property and will now not have to face Cook to pay expenses and the like. This monopolistic buyer has found a real way to option property for free, and buy land at a discounted price. That is theft of real property all accomplished with the blessings of the State Board of Regents and the State Controlling Board.

Statement of the Case

Federal District Judge Lesley Brooks Wells **was, is, and has been** an employee of the defendant Cleveland State University since 1992. The Judge worked as an adjunct professor at both The Marshall School of Law and the Levin School of Urban Studies, CSU (please see Directory of Federal Court Guidelines vol. 2 Christine Housen managing editor, Aspen Law & Business 2000-3 supplement pg. 6c-178 and also The American Bench, judges of the nation, eleventh edition 2000/2001, Forster-Long publishing pg. 2014). Five & one-half weeks before Federal trial, Judge Wells allows my then attorney, Larry Rich to withdraw from the case one day after petitioning her court (see docket #46, 47) **Pleadings and discovery were over**. Cook finds a new attorney in Scott

Kahn, but he will not enter the case without the ability to reopen for a brief time, both the pleadings and discovery, so as not to expose his E. & O. insurance to the incomplete work of Larry Rich. Judge Wells says no and then allows defense CSU to drop their demand for a jury trial. **No Jury**. At trial, the Judge quashes the subpoena of Judge McMonicle(8109 Hough case), Judge Patton(Stem case), Wm. Zabkar, attorney for Stewart Title co., Kathleen Kuhr, attorney for Commonwealth & Lawyen Title, Gerald Gordon, former CSU board member and current member of State of Ohio Board of Regents, Anthony Garffoli, attorney and former CSU board member, Wayne Levering, appraiser for LoConfi property tax donation to CSU, C. Ashley Bullard, Director I.R.S. in Ohio and more. AS a non-attorney, I did the best I could do, **no discovery/pleadings by me!**

CSU says plotting/planning and they cannot pay more then the average of (2) MAI appraisals plus 10%. Cook says they took the marketability of my title so the land is not sellable and then they delay prosecution of eminent domain, freezing the land giving CSU a free option on the land without spending a dime! Cook has a duty to disclose all information he has to any possible buyer, tenant, finance company, title company, real property insurance company, ect. further making the land unmarketable. All Cook wants is "full and perfect compensation in money". That will include moving expenses, lost parking income, lost customers due to the development, ect.

Cook claims CSU did violate State code, Ohio Administrative code, and Federal Law. There is no question the map issue where a state agency with the power of eminent domain claims use and possession, is a taking under U.S. Supreme Court case law. Being in the developmental area affects financing due to no bank will wish to prove value, or want to wait for CSU to initiate eminent domain if they get the land back. CSU has 11th Amendment immunity and Ohio

has no inverse condemnation laws. By not recording the area with the county recorder's office, CSU did commit insurance fraud negating any title policy in the area. The mortgages in the area are worth only the amount of a jury verdict at trial. If that verdict is short, the bank must go after a borrower personalty, after all, eminent domain does perfect title unto the government. CSU released its plans to the media, taking buyers out of the market, further "freezing" the land. The land went down in value over the years due to CSU being the only buyer. Who will wish to buy for fair market value to eventually face the state in court to try to prove value? CSU admits I am one of nine properties left to buy to complete their development (see Tr. pg. 775 line3-5 and linc24 to pg. 776 line 2) but I am not a high priority to them. Still, being in the plans will freeze the property as does urban renewal. The state controlling board requests prove more freezing. The 8109 Hough case and the Stern case prove an unmarketable title. CSU sends real estate appraisers to value the land and threatens a taking, but no follow through and no letter stating they will not take so I can have a marketable title. At Sheriff's sale, CSU docs nothing, knowing they can do eminent domain at any time to get the property and will now not have to face Cook to pay expenses and the like. This monopolistic buyer has found a real way to option property for free, and buy land at a discounted price. That is theft of real property all accomplished with the blessings of the State Board of Regents and the State Controlling Board.

Reasons for Granting the Writ
The CSU map(s) issue:

From 1985 or 1988, Cleveland State University (CSU) did produce, publish, distribute and display on 13 or 15 outdoor bulletin boards, color maps (about 250,000 defective maps) showing Cook private property as part of CSU's

parking lot "M". (Tr.pg 237 6-17) (Tr. pg 252 1-7) The maps were distributed to parking permit people at the least. (Tr. pg. 238,1-8) This continued to happen through at least July 6,1998, the John Oden memorandum. (Tr. ex. 7-9) These mistakes on the maps led CSU parkers to trespass and park on Cook private property thinking it was part of lot M as testified to by Cook and tenant Wade, and the cars had CSU parking stickers hanging on their inside mirrors. (Tr. pg 737, 11 to pg 739, 14) (Tr. pg 895 3-11). The orange color & M on those color maps denotes that my property is part of university lands and property-yes (Tr. pg 241 18-23). By stipulation at trial, 1) the subject property has been in the university-planning district since 1966 and still is today, (Tr. pg 172, 21 to pg 193, 20) and in the city of Cleveland urban renewal area known as the Central Core area, formed by city ordinance 968-a-69 on 2/18/1970. (Tr. pg 847, 23 to pg 848, 7). Section 13 of that ordinance makes CSU the named redeveloper.(Tr. ex. 1-09 to 12, 1-13 to 14) That ordinance is still in effect today. (Tr. pg. 63, 10-12) CSU's Crimminger testified, "We never show property acquisitions as part of our parking maps, we only show land that we own. (Tr. pg. 255, 23-25) Cook got those maps back into evidence at trial pg. 478, 6-24.

The concept is called required acquiescence, (*see Group W. Cable v. Florida Power Corp.*, 94 L.Ed. 2d 282,290 (1987) and is at the heart of the concept of occupation. It is also called a unilateral claim of entitlement (*see Ruckelshhaus v. Monsanto*, 81 L. Ed 2d 815 (1984) and quoted again in *Noland v. California Costal Commission*, 97 L. Ed. 2d 677,687 ft. note 2 (1987) Also called usurpation in Bouvier's or Black's law dictionary, it is the unlawful assumption of the use of property which belongs to another; an interruption or the disturbing a man in his right and possession.

Cook complained to CSU's Cadwalader and

Crimminger but to no avail (Tr. pg 883, 2-18) on the map issue.

CSU knew this is private property, see Tr. admitted exhibit 8-25 to 8-28 dated 9/11/1975 from the v.p. of student services, re: parking

In *Loretto v. Teleprompter Manhattan*, 73 L. Ed 2d 869,883 (1982) this Court found that

"...the owner suffers a special kind of injury when a stranger invades and occupies physical property, it effectively destroys the owners right to possess, use, and dispose of the property and such an invasion is qualitatively more sever... since the owner may have no control, over the timing, extent, or nature of the invasion."

In *Kaiser Aetna v. U.S.*, 444 US 164, 179 (1979) this Court said" the right to exclude is so universally held to be a fundamental element of property rights. Government cannot take without compensation.

In *Noland v. California Costal Commission*, 97 L. Ed. 2d 677,681 (1987)

"...where government action results in a permanent physical occupation of property by the government or others, there is a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner..."

pg. 692 We view the Fifth Amendment property clause to be more than a pleading requirement, and compliance with it to be more than an exercise in cleverness and imagination... since in that context there is heighten risk that the purpose is avoidance of the compensation requirement..." This Court has spoken!

Kruse v. Village of Chagrin Falls, 74 F. 3d 694,700 (1996) the same Court that ruled against me states, "the one incontestable case for compensation seems to occur when government deliberately brings it about that it's agents, or the public at large regularly use, or permanently occupy, space

which is understood to be under private ownership.

State of Ohio v. City of Columbus, 667 N.E.2d 8, 9 (1996) Ohio Supreme Court says "there must be compensation where property owner is partially deprived of use of his land as where he is wholly deprived.

Cook has a duty to disclose to a buyer that CSU has distributed these maps to the public as well as the fact that the property is in their developmental plans making the title unmarketable and the property not sellable to a buyer.

Maps count: you may remember in 1999 when a NATO war plane bombed the Chinese Embassy in Belgrade killing Chinese nationals. Rioting broke out in Beijing and we thought war was eminent. The culprit, a defective/faulty map. You may remember when a U.S. fighter plane flew through the Italian Alps and cut a cable sending a ski gondola car to the ground killing all 20 ski passengers. A military court in Camp LaJeune N.C. found Capt. Ashby innocent due to a faulty/defective map. Yes, maps are important! (Please see newspaper articles)

The Equal Protection issue:

At trial, it was testified to that a private developer must acquire all land needed for the project before start of that project or face much higher prices. That is because the developer does not have the power of eminent domain. (Tr. pg. 398,19 to pg.400, 5) CSU has defined a large campus since 1965 with some properties still within developmental plans today. (2001) I am one of those properties. The same values that apply to a private developer must apply to CSU, acquire the land first. Developmental plans of CSU will "freeze" the property and then CSU will delay prosecution.

CSU takes value away because it is the only buyer. (Tr. pg. 531,7 to pg. 534,6—pg.707, 16 to pg 708,8—pg.713, 9-13) Called a buying monopoly, it has

eminent domain power. (There are Federal and State antitrust laws that Cook believes CSU violated) Who will buy property for fair market value to eventually face adversarial litigation to prove value? The attorneys are costly and the outcome is uncertain. In my appeal, I quoted *City of Brookpark v. Bence* (city of Cleveland) Cuyahoga County Probate Court #1096255 where Cleveland bought the land on 1/19/1994 paying $410,000.00 and the city of Brookpark did eminent domain with a jury verdict of $276,000.00 on 1/27/1995, a loss of $136,000.00 in one year for the city of Cleveland taxpayers. Eminent domain is a hazard and dangerous.

CSU has other monies to use besides the state funding for land purchases if they want. Parking income, bookstore income, food services income, unallocated reserves ($7,600,000.00) and they control the CSU Foundation, a non-profit entity with an I.R.S. 501 C 3 making donations tax exempt (at $25,000,000.00 today). Because property is protected by the Constitution, it should not have to compete with other expenditures or properties to get paid when "frozen" by CSU. (Tr. pg 762,12 to pg 763,21) No critical area of development for CSU, highest and best use of funds for CSU, more parcels of property available to buy for CSU than funds available, so CSU prioritizes, willing sellers who agree to CSU price and terms verses those who want more money, no issue, CSU will not buy at this time. Sellers must not be made to compete (Tr. pg 765,2 to pg 768, 1) to a monopolistic buyer. No price agreement and priorities elsewhere. (Tr. pg.199, 11-17-pg775, 3-5) I was not a high priority but CSU bought Ernie's Eatery (Tr. pg788, 24 to 789,18) on 2/10/1999, property that is just 120 feet from my property on the same side of the street. CSU knew at the Cook deposition on 11/11/1998, 1 and ½ years before the sheriff's sale that my property was in foreclosure and did nothing. Tr Docket#87 CSU might have

1) Initiated eminent domain to stop the sale.

2) Bid on the property at the sheriff's sale to reduce the loss they caused Cook

3) Release the property from developmental plans to allow for a marketable title so a fair bid at sale.

4) Accept responsibility and allow CSU to be added as a defendant in the foreclosure action.

5) Tell FirstMerit bank that this property will be excluded allowing the bank to bid.

6) At trial, they stipulated to the fact that this property was in an urban renewal area. As redeveloper, they could have chosen to not take and publish that decision.

But no, CSU sends Cook to the wolves!

The financing issue

The right to finance and refinance property is protected. Cook has a duty to disclose all relevant information to the bank making the loan, which he does. After such a disclosure, what bank will finance? But FirstMerit did. The Kapottos letter states (Tr. pg. 922, 19 to pg. 924, 11) that the bank put a $25,000.00 second mortgage on my home condo. as an abundance of caution to offset the possible deficiency in the event CSU would acquire this property for less that the $150,000.00 original mortgage. No CSU, no abundance of caution, and Cook would still have his home condo. Cook discloses the CSU Kolpein letter of 1984 to the bank. It states 1) CSU will buy for no more than $130,000.00 2) and if not agreed to by Cook, they then recommend appropriation. CSU v.p. Crimminger agrees with what the letter says (tr. pg. 209, 12 to pg.210, 25)

Cook will try to sell the property when he is behind in his payments but he does not have a marketable title to deliver to a buyer and a duty to disclose all known information under fear of a lawsuit by an unhappy buyer for fraud, concealment,

misrepresentation, and neglect.

The bank forecloses and at sheriff's sale there is only one bidder, Cuyahoga County prosecutor Saad who buys for the minimum bid of $100,000.00 and titles in his wife's name. The bank did not bid for an obvious reason. If they got the property back 1) they stand in Cook's shoes and wait for CSU or 2) if they find a buyer, they are forced to disclose all information chasing the buyer away. Anyway, there is no marketable title. Attorney Saad is now in trouble because to sell to someone other than CSU, he must disclose all facts. Cook filed (2) affidavits against interest with the Cuyahoga County Recorder's office. (#199912140692 12/14/1999 and #200005180676 5/18/2000) (*see* Bk. 37 Am Jur 2d pg.221 lack of title in the nature of a. latent defect sufficient for a finding of fraud in nondisclosure, even though defect concealed is a matter of public record. *Hadley v. Clinton County Importing Co.*, 13 Ohio State pg. 502 (1862)).

Cook motioned the foreclosure court magistrate Buca to add CSU as a named defendant as allowed by Ohio law 5301.24

("The state, or any board or commission of the state, may be made a party in any court of common pleas or probate court, to any foreclosure proceedings, or other proceedings to sell real estate and marshal liens, to secure an adjudication concerning any claim, mortgage, or other lien which the state has or claims on the premises involved.") to no avail. (*see* Cuyahoga County Court of Common Pleas case #335310 Judge Friedman docket #15) Then the bank goes after Cook for a deficiency judgment. (*see* vol. 2589 pg. 626 Court of Common Pleas of Cuyahoga County.) CSU has 11th Amendment Constitutional immunity and Ohio has no inverse condemnation laws.

FirstMerit (F.D.I.C insured) required a title search and insurance for the loan. The bank is the named beneficiary of that policy. The title company states that there was no

recording of developmental plans of CSU or urban renewal plan of the city of Cleveland. They further state that they are not required to search beyond the recorders office to even include the city record or newspaper articles. Sedotti says that the city record is public notice as well as newspaper articles to keep the taxpayers informed, but Ohio is still a recording state and they do have a duty to disclose to the county recorder. Buyers of real estate do read the newspaper. Vanni testified that no buyer will want to buy property in the plans of CSU to eventually face the state in court for eminent domain. When CSU takes buyers out of the market, it is a taking.

Witness Shenker testifies to financing companies issuing letters of commitment to loans and when they find out the property is within the CSU boundaries, they withdraw the letters of commitment. (Tr. pg. 449, 1 to pg. 450,6) Buyers have asked for letters from CSU saying that they will not take the property and none of those potential buyers of property were able to get those letters. (Tr. pg. 427, 9-22 and pg. 445,24 to pg. 446,17)

The bank has my property valued by their appraiser, Evaluations Limited on 4/9/1996. The market approach is set at $240,000.00 and income approach is $215,000.00 (see trial exhibit 4-107). The CSU defense real estate expert values the property at $125,000.00 as of 11/02/1999 (see trial exhibit B) Clearly, Cook lost over $100,000.00, in 3 ½ years, of value alone on his property. This is a taking. (*see Sayre v. U.S. and City of Cleveland*, 282 F. Supp 175, 176 (1967) #11 Eminent Domain key 2(1)

"Abuse of exercise of power of eminent domain constitutes taking of property without just compensation if that abuse directly and proximately contributes to, hastens, and aggravates, acting alone or in combination with other causes, deterioration and decline in value of area and subject property. U.S.C.A. Const. Amend.5.) The abuse is delay.

Since I cannot get to a jury, I cannot prove value in 1985 of, I believe, $500,000.00. This is also a good reason for no delay of prosecution of eminent domain. This Court denied the cert. in Bk. 42 L. Ed. 2d 64(1974).

The problem for CSU is based on exactly the testimony of their defense witness Ritley's statements. (Tr. pg. 1005, 3-18) he made my case! I quote. "We have assumed that there is no adverse influence exerted by any past, present, or contemplated plans of Cleveland State University which would include the subject property." What does that mean, Cook asked of Ritley. This statement came from page 23 of the Ritley appraisal on the subject property put into evidence by Roger Synenberg, attorney for the defense, (Tr. ex. B) CSU. I continue. Line 7.

"in reaching the value conclusion where we would have an open and competitive market, we assume that they are not one of the players, (CSU) that they are not a buyer here, that they are not going to be someone out competing for the property or using the power of eminent domain. We are trying to say this is a tabula rasa, a blank slate. Buyers and sellers in the private sector are the people who are going to come and look at this property." Line 15 "Does CSU have eminent domain." Answer yes, they have." Testimony shows, the property is in the developmental plans of CSU since 1965. CSU caused (2) real estate appraisals in 1982, (2) in 1984, (2) in 1988. Cook noticed printed newspaper articles as far back as 1977, several months after he already bought the property, with maps of the CSU developmental plans. (Tr. 836, 11-17 and pg. 841, 18-25). The latest of those plans were made and put in the Plain Dealer in 1996. The Kolpein letter in 1984 offering to buy for $130,000.00 and promising eminent domain if not accepted. (In Cook depo. 11/11/98 as an attachment.)(Tr. pg. 851,1 to pg. 857,5, pg. 209, 2 to pg. 210,25, pg. 208, 14-16) 3/21/1988 the Cleveland Ordinance 199-88 and 8/1988 the CSU appraisals. Not a coincidence.

The many conversations with CSU such as with Cadwallader, (Tr. pg. 869, 10 to pg. 871, 1) the meeting with CSU in 1996 re: the vacating of the back alley, The Crimminger letter to all (4) landholders by Crimminger after the meeting regarding the alley, the attorney Brosse letter to president von Ummerson and her response letter. Also the map issue claiming possession. Least I forget, being in the Central Core urban renewal area of Cleveland with CSU as the named redeveloper. (Ord. 968-a-69)

No delay of prosecution, and we would have a jury verdict on value and date of taking.

Witness Heiser testifies that his companies building would be hard to rent due to the unknown time frame of CSU. (Tr. pg. 707, 24 to 708, 8)

CSU and relocation expenses.

Question: Has CSU ever paid relocation expenses? Crimminger: Not to my knowledge. Why, Answer, The only time you pay relocation was if you were in an eminent domain circumstance. (Tr. pg. 277, 2-9) Wrong according to Ohio law and Admin. Code. & Federal law.

The city of Cleveland planned the Central Core urban renewal area with Federal H.U.D. monies. (*see* Cleveland Ordinance 1967-68 2/2/1969 pg. 197 of the city record.1969) H.U.D. gave Cleveland monies to develop the Nouvelle Espoir Development area on 1/18/1984 as confirmed by Cleveland Ordinance 3018-83 (Tr. pg. 52, 1 to pg. 53, 18.) and Cleveland Ordinance 968-a-69, the Ordinance making the Central Core area was used to get the monies. Section 13 of that Ordinance makes CSU the named redeveloper. I quote,

" That it is hereby found and determined that, in addition to the elimination of slums and blight from the urban renewal area, the undertaking of the program in such area

will further promote the public welfare and the proper development of the community (a) by making land available, for use in accordance with the use or uses specified in the plan for said area; and by providing, through the redevelopment of the urban renewal area in accordance with the plan, a cohesive neighborhood environment compatible with the functions and needs of Cleveland State University.

The point is the use of federal money subjects this area to the 1970 Uniform Relocation and Real Property Acquisitions Act. Title 42 U.S.C. 4601-4655. Ohio Law 163.59 is identical to 42 USC 4651. Also see State laws 163.51 to 163.57 on relocation expenses. Ohio Administrative code also applies. 5501:2-5-01 to 06. For Cleveland, see State law 719.011. From 1981 to 1996, Ohio had a Public Improvement Inspection Committee, State law 103.41 to 103.47 who's job it was to watch the payments of relocation expenses.

CSU violates Ohio Revised code and Ohio Administrative code:

CSU is wrong. Ohio law states to a jury for value. Examples. 163.06 (b)...before the jury has fixed the value. (1) or the jury. 163.09 (a) for the assessment of compensation by the jury. (b) for the assessment of compensation by the jury. (c) for the assessment of compensation by the jury. (e) but the rights of each owner to compensation, damages, or both shall be separately determined by the jury in its verdict. Also *see* 163.10, 163.14, 163.16, 163.21. of Ohio Revised code. (Baldwin and Page both publish those laws) State law 163.59 is the mind of the Legislature.

(A)... acquire real property expeditiously by negotiation.

(B) "appraisal" means a written statement independently and impartially prepared. (Cook brought into testimony that CSU Cadwallader did sent a copy of a former appraisal to a new

appraiser. (Tr. pg. 213,4 to pg. 214, 2) It sends a message to the new appraiser of what value CSU did want. After all, CSU is the one paying that appraiser.)

(C) No owner shall be required to surrender possession of real property before.. (the map issue took my property for the use of CSU)

(G) In no event shall the head of an acquiring agency either advance the time of condemnation or defer negations or condemnation... or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property. Also *see* Ohio Administrative code 5501:2-5-06 (8) quoted earlier, the exact same wording. (I believe delay is coercive action, do you?)

Ohio Administrative Code 5501:2-5-06, (A) (1) the requirements of this rule apply to any acquisition of real property... or state program or project. (B) (1) Expeditious acquire; the agency shall make every reasonable effort to acquire the real property expeditiously by negotiation. (4) taking into account the value of allowable damages or benefits to any remaining property. (8) Coercive action: the agency shall not advance the time of condemnation or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce the price to be paid for the property. (same as Ohio law 163.59) (10) Payment before taking possession: (those maps claimed possession and use) (12) Inverse Condemnation: if the agency intends to acquire any interest in real property by the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of a taking of real property.

This Court is referred to 5501:2-5-02 for identical general relocation requirements of state agencies as the state laws.

State law 719.011 applies to Cleveland. "The powers

conferred upon the impacted city by this section shall be exercised... of a plan for the relocation of persons, families business concerns, and others to be displaced by such exercise."

Bk. 77 Ohio Juris. 3d pg. 40-41 'Where a legislative determination of blight is made, courts are required to and should be zealous in giving it great weight. (*Eight & Walnut v. Public Library of Cincinnati,* 385 NE 2d 1324, 1325) (1977) So speaks the Court of Appeals.

Cleveland did not record with the county recorder because the area was large (they wanted as much HUD money as possible) and they wanted the full real estate taxes on the property. When the city calls the area blighted, as it did in 968-a-69 as was needed to get HUD monies, all land owners will file for real estate tax reductions or elimination of taxes. Who will wish to pay taxes in an area that is blighted, facing eminent domain?

Ohio is a recording state. 5301.25 et seq. "Recording of instruments for the conveyance or encumbrance of lands"(eff. 9/29/1961) Bk. 80 Ohio Jur. 3d 606 also pg. 587, sec 45, "The general object of the laws requiring the recording of instruments conveying, encumbering, or affecting the title to real property is to furnish the best and most easily accessible evidence of such titles, so that subsequent purchasers or lienors may be informed and have notice of any prior conveyances or encumbrances."

CSU knew of these laws and rules for they own a law school, and also have an urban studies school ranked second best in the nation by U.S. News magazine. Nancy Bulkley Cribbs has been the State Attorney General on staff since 1982. The State Board of Regents controls there every action as does the State Controlling Board their monies. The CSU Board has (4) attorneys on it now.

I call your attention to the (3) land purchase requests, testified to at trial, from CSU to the State Controlling Board.

(A) Arthur G. McGee co. Dec. 8,1969, Acres previously purchased in this area 20.9. Balance of acres to be purchased in this area. 95.

(B) Shell Oil Co. October 31, 1985, Acres previously purchased in this area 60. Balance of acres to be purchased in this area. 30.

(C) Emerson Press Acquisition Corp. March 24, 1997, Acres previously purchased in this area, 78, Balance of acres to be purchased in this area, 20 (*see* Tr. pg. 219, 9 to pg. 223, 7 for all 3)

These documents are prime facie evidence of CSU's knowledge of the property they wanted and the State of Ohio knew as well the property that it's alter ego wanted. This shows that in the (30) years of the time span (1969-1997) these properties are within the "green line" an area designated for acquisition by CSU and disseminated to the public through the Plain Dealer newspaper articles and other ways, developmental plans of the University, and at various times offered to purchase. CSU and the State did reserve unto themselves for future purchase at their pleasure this land.

The city of Cleveland passes Ordinances 1577-66 in 1966, the Euclid-Cleveland State Land Protective District and 199-88, the Cleveland State University Land Protective district in 1988, which the city codifies as 341.01 to 341.06. Witness Joe Sidotti, assistant commissioner, department of Community Development and the manager of the real estate office (He states that his office is Federally funded) testifies that these ordinances affect the <u>legal rights</u> of landowners because if property owners wish to develop their property, they would have to be subject to certain design controls to maintain uniformity and consistency in the urban renewal area.(Tr. pg. 77, 12 to pg. 78,4) This will "freeze" the property due to seller disclosure and public law knowledge. It tells the world that this is CSU property, CSU just has not purchased and paid for it yet.

Title insurance companies can claim fraud-concealment. No recording. Insurance fraud violates Ohio law 2913.47. Quoting part (2)" ...withholds information, prevents the acquisition of information, or by any other conduct , act, or omission creates, confirms, or perpetuates a false impression as to law, value, state of mind, or other objective or subjective fact. (c) at $100,000.00 or more, a third degree felony. Also see State law 2913.43 writing by deception. (a) No person, by deception, shall cause another person to execute any writing that disposes of or encumbers property, or by which a pecuniary obligation is incurred. (b) at $100,000.00, it is also a third degree felony.

FirstMerit (First National Bank) is a F.D.I.C. insured bank. They can claim damage to their mortgage security by CSU and Cleveland. They depend on title insurance that Cook paid for to inform them of an unmarketable title. It is the unmarketability of title that kept the bank and others from bidding on the foreclosed property. If the successful bidder, the bank has also a duty to disclose to a buyer all information known. The alternative is to sit and wait for CSU at the schools pleasure. The land will have a low income, as what happened to Cook, due to the duty to disclose information to the tenant. This Court ruled on this issue in *Armstrong v. U.S.*, 364 US 40, 4 L.Ed. 2d 1554. (1984). Rendering liens unenforceable.

Ohio law 3333.071 "...no expenditure shall be made for land for higher education purposes by public institutions of higher education or agents of such institutions from any fund without the approval of the board of regents and the controlling board."(eff. 11/6/1981)

The Ohio State Constitution, Art. I sec. 19 is titled Inviolability of private property. Private property shall ever be held inviolate. (Black's law dictionary 6 th ed. defines the word inviolability as "safe from trespass"

Ohio law 3345.122 Civil immunity of trustees. "... not

liable in damages in a civil action for... or property... unless the trustee acted with malicious purpose, in bad faith, or in a wanton or reckless manner..." Did the CSU administration act in such a manner?

The unmarketable title issue.

A marketable title is defined in Ohio Juris. 3d Bk. Words and Phrases (K to Z) pg. 79 also the same Bk. 76 Ohio Juris. 3d pg. 13 property.

" A marketable title to realty imports such ownership as insures to the owner the peaceable enjoyment and control of the land as against all others, and in order to constitute such a title, it should appear reasonability certain that the title will not be called into question in the future so as to subject the purchaser to the hazards of litigation with reference there to either in the defense of his title or the removal of any burden or encumbrance on it."

It is well settled in Cuyahoga County which is where the subject property is located, that the designation by the city of an area as a "community development area' constitutes the taking of private property for a public purpose. (*see* 8109 *Hough v. City of Cleveland*, 277 NE 2d 90, 91(1971) It appears that the legislative body felt, that the use of the words, "community development area" sounded better than "urban renewal area" pg. 92 "The evidence herein establishes that abstract companies of this community who guarantee and insure title to real property consider the designation of an area as an urban renewal area constitutes a cloud on the title of all real property located therein." Res Judicata!

In Ohio, a marketable title is written in or implied in the sales contract for real property. I found this in Gilbert's law summaries, page 316 but *see* (*Wallach v. Riverside Bank*, 206 N.Y. 434 (1912) Also bk. 80 Ohio Jurisprudence 3d pg. 104 "the vendor is obligated to convey a "marketable' title

and the purchasers promise is conditioned upon conveyance of such a title."

In *Stern v. City of Cleveland*, 416 NE 2d 636 (1979), the Appeals Court of Ohio, Cuyahoga County held that all parcels with an area designation as urban renewal were part of the area, not merely parcels located within active project areas." The argument was active verse inactive and inactive should not be held to the same standard. Wrong, the Court says it is all urban renewal. This case upholds the *8109 Hough* case. Pg. 638 references the *8109 Hough* case.

By stipulation, since 1965, the property is in the CSU plans (the green line) and since 1970 in urban renewal plans. This should also make the title unmarketable. The duty to disclose to a buyer should make the title unmarketable. The title insurance issue and financing issue should also make the title unmarketable. The delay issue should make the title unmarketable. The fact that CSU does disagree on value will make the eventual eminent domain fight a "hazardous" litigation, no marketable title, by definition. " If the price that the willing seller wishes to attain for his property is beyond the appraised values that we receive from our appraisers, we don't have a deal. We don't buy the property. (Tr. pg.199, 13-17) Now I need a mandamus. A Federal trial, Appeal, and U.S. Supreme Court. All this before a jury trial for value. Hazardous!

CSU says plotting and planning:

For a discussion on this subject see Bk. 37 Am. Law Rev. 3d pg. 129, Condemnation- Pre Improvement Planning. exceptions and qualifications. 1) "Where the actions of the condemner, in anticipation of the public improvement, evidence an unequivocal intention on the part of the condemner to take the property required for the improvement and those actions are followed by work on or in connection

with the improvement,...such actions may amount to a taking of the property." (*see Hilltop Properties v. State*, 233 Cal App. 2d 349/43 Cal Rptr. 152"(1971)...since the method used in obtaining the property constituted condemnation or its substantial equivalent" *Philadelphia Parkway*, 250 Pa 257, 95 A. 429 (1969)

"Held that a property owner whose land lay within the boundaries of a platted..., by a series of unequivocal acts, over a period of years, had evidenced its intention to open and complete..' "...a completion in part would serve no useful public purpose.." "Unequivocal act evidencing an intention to open... followed by actual work done on... Concluding then that what the city had done was equivalent to notice that the parkway would be open and completed and that the lands required for this purpose would be appropriated under the power of eminent domain unless otherwise acquired, the Court said that the city had committed itself to the opening by a series of acts more expressive of its fixed purpose than could be indicated by a resolution to open without anything more, and what the city did constitutes a taking in the Constitutional sense."

CSU delays prosecution of eminent domain:
An abuse of power

CSU has planed a large campus since 1966 and in all subsequent plans since. They all, by stipulation at trial, included the subject property. (Tr. pg. 172, 21 to pg. 193, 20) CSU claims more property to buy then money to pay for so they do not wish to use eminent domain. (Tr. pg. 767, 19-25) They have the power! They used eminent domain with the Shell Oil co. property on East 18 th (*see* Cuyahoga County Probate Court #974164, 1/8/1986, Judge John J. Donnelly.) also Hedi-Ann Kangesser et. al (*see* Cuyahoga County Probate Court #1060749, 9/18/1991 Judge John E. Corrigan.

There were others. The CSU wish to not use eminent domain is akin to a robber going into a gas station with a gun placed at the cashier's head and stealing money. At trial, he tells the judge and jury, but I would not have used the gun.

When CSU places their "Green line" on maps, it is a "Freezing" of property because these are campus maps. That "freezing" allows for delay (Tr. pg. 177, 9-17 and pg. 179, 5-19)("freezing" defined *see* Bk. 36 Am. Law Rev. 3d pg. 753, also ft. note 3 "are broadly interpreted to include resolutions or similar measures lacking the formality of statues or ordinances.") Cook claims also that when the State of Ohio passes a budge including monies for land purchases for CSU, the commitment is there to the projects creating a "freezing" and a taking. Those budgets are public records. Plotting and planning is allowed up to a point. In 1966,1969,1971,1982,1985,and1996 CSU set developmental plans and gave those plans to the media. (for news articles and maps see pl. admitted ex. 556 and opinion 555) Who in their right mind will buy any property within that line knowing they have a value fight on their hands costing many dollars? This was testified to by witness Vanni. The second that CSU does anything to <u>implement</u> the plan, the clock starts to run for delay. Buy a lot, demolish a building, or even dig a hole for landscaping. When CSU goes from blueprint (the plan) to construction, the clock should be running.

CSU states no critical use for the land or area. (Tr. pg. 765, 2 to pg. 768, 1) immediate useful purpose, highest and best use of funds, more parcels available to CSU to purchase than funds available, so it prioritizes. (Tr. pg. 767 19-25) Why was I not acquired yet? Priorities elsewhere. I was not a high priority. (Tr. pg. 775, 3-5) By Stipulation CSU bought Ernie's Eatery on 2/10/1999 well before the sheriff's sale on my property (Tr. pg. 776, 23 to pg. 777, 5) (also see Tr. pg. 186, 2-9 and pg. 191, 17-22 and pg. 197, 6 to pg. 198,13 and pg. 199, 11-15) At trial, Crimminger

testified that CSU authorized their attorney Roger Synenberg to make me an offer before the sheriff's sale, but only for the amount they wished to offer. (Tr. pg. 202, 19 to pg. 203,11) Ohio requires a jury for value. The point is that they still wanted my property for their campus. "... and if the CSU board of directors deemed it appropriate, they wouldn't necessarily have to finish one project to change the boundary or start a new project" answer "that's correct" (Tr. pg. 230, 8-11)[1]

We know if we really want the land, we can do eminent domain at any time we please. (Tr. pg. 180, 16-18) This is a further reason to acquire the land first.

I am one of 10 properties left to buy. What about a time frame? The CSU administration creates the time frame and they have not set a time frame. Who is the administration?" Myself, V.P. Jackson, the President." (Tr. pg. 193, 14 to pg. 194, 9) V.P. Crimminger testimony.

Has CSU ever paid relocation expenses? No (Tr. pg. 277, 2-9) No eminent domain, no relocation expense to CSU. What about Cook who lost most of his customers to the earlier development of CSU? Good Will? Parking income?

The U.S. Court of Claims said in *Rockefeller Center Properties v.* U.S., 32 Federal Claims reporter pg. 586 (1995) "valid contracts constitute private property for purposes of takings clause of the Fifth Amendment. I had a contract with the oil company. I had a contract with the corporation I owned to rent the property. CSU paid appraisers never accounted for business loss, good will, lost or present parking income, customers gone due to the development, and more. CSU, by its actions, says I should <u>not</u> be made whole,

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[1] This really kills the CSU defense of plotting/planning for they have eminent domain power, 11th Am. Immunity and no inverse condemnation laws.

required in money by the Constitution.

Delay of prosecution means not facing a jury for value. Ohio law and Ohio Administrative Code are clear. CSU believes that the appraisers they choose are 100% correct on value. Those MAI appraisals are added together and divided by 2, then 10% is added. That seems fair. If the thinking of CSU is correct, we do not need the court system or juries. When CSU does hire any appraiser to find value on property, it does show intent. If the price is too high, do not buy, but the land owner must be given a letter stating that CSU will not be taking the land eminent domain in the future.

But CSU has a prejudicial interest due to State budget constraints and a prejudicial control. They pick and pay for those appraisers (Tr. pg. 850, 25 to 851, 24) As I stated, Ohio law and Administrative code is clear, a jury for value.

By not going to a jury, CSU gains greatly. That jury will set an undisputable precedent on value in the developmental area. As many buildings and types of businesses are similar, a high value will decimate the land acquisition budget of CSU. The jury's purpose is only value. There is no power on earth that can stop legitimate eminent domain. Again, CSU must get the land first.

Ohio law 163.59 is identical to Federal law title 42 USC 4651 and talks about delay as does Ohio Administrative code 5501:2-5-06, *see* (8) coercive action, "the agency shall not advance the time of condemnation or defer negotiations or condemnation or... take any other coercive action in order to induce the price to be paid for the property." Identical to state law 163.59 (H).

State law 719.011 relocation of businesses impacted by eminent domain of a city. This affects Cleveland in urban renewal. By delay, CSU and Cleveland do not pay.

Another reason for delay, I believe, is Cook and Shenker found fraud in the LoConti property donation to CSU for an I.R.S. tax deduction. That is the reason Judge Wells

quashed the subpoena of LoConti's appraiser and the head of the I.R.S. in Covington Kentucky. We also found fraud in the Wolf Envelope mfg. property to CSU. I am not a prosecutor but I will disclose this information to one if this Court thinks it is appropriate.

Testimony of V.P. Jackson admits delay.

"We always have individuals who are willing to sell land or sell property at prices that exceed those two appraisals. O.K. so what happens: answer: There is not an opportunity for the university to purchase it. (Tr. pg. 767, 1-9) If they don't accept the price that you offer you don't buy. Answer: correct: Question okay, and how long would you not buying it go on into the future? Answer: If the university has no immediate need time can go on for a very long period of time. So it depends on the university's need. Answer: correct." Again, the land is in the developmental plans of CSU and the urban renewal area since 1966 or 1970. Another reason to get all the land first.

CSU wishes to plan and so do landholders. To be held in limbo is delay of prosecution and 'freezing" due to the duty to disclose all information to a buyer.

In addition to ordinance 968-a-69 making my area blighted and slums as determined in that ordinance, the connection between CSU and Cleveland is further proved in the Crimminger testimony. "The city of Cleveland must approve every "green line" change the Board of CSU makes. The State of Ohio does not have to approve." (Tr. pg. 179, 9-22)

Delay of prosecution does give CSU a free option to purchase at a later date without spending a dime. If some one went to the stockbroker Merrill, Lynch, Pierce, Fenner, and Smith and asked for a free option to purchase IBM stock at some future date, and asked to pay no money, they would be committed to a mental institution. This is exactly what CSU did, in fact, get on this real estate, a free option.

See Archer Gardens v. Brooklyn Center, 468 F. Supp 609 (1979) delay acquisition to gain a tactical advantage. #1 ... by delaying the acquisition date in order to acquire urban renewal property at tax foreclosure sale at lower prices. The Court quoted *Richmond Elks Hall Ass'n v. Richmond Redevelopment Co.*, 561 F. 2d 1330 (1977)

"When a public entity acting in furtherance of a public project directly and substantially interferes with property rights and thereby significantly impairs the value of the property, the result is a taking...no person was willing to purchase... because the defendants had condemned the property for all practical purposes or actual condemnation was imminent.

See Foster v. Herley, 330 F. 2d 87, 405 F. 2d 655 (aff'd 1964) "... permitting years of delay were found to amount to a taking of plaintiff's property.

See Amens v. City of Dearborn, 718 F.2d 789,790, #12, 791 (1983) "Where city made it clear its intention to purchase and redevelop property in certain neighborhoods, but notwithstanding such intent, city chose not to invoke its condemnation power...5th Amendment violation. A taking will be nullified if public entity acted in an arbitrary or bad faith.

See U.S. v. Couch, 822 F. Supp 457, 458 #3 (1993) " Delay was intentional device by government to gain a tactical advantage"

See Martin Barriss v. Cleveland, 17 ABS 634, 636 (1934) "...that there was a tremendously unnecessary delay in going forward and appropriating the property under the law... a period of (8) years ... and the defense of reasonable diligence and unavoidable no good... and the company was placed in a position of suspense and uncertainty due to needless and lengthy delay.

See Dunbar v. Toledo Plan Commission, 367 N. E. 2d 1193, #2 (1976) the Court of appeals says, the city planning commission did not have the right to freeze property based on

uncertain abstract concepts for future highway construction.

See Easton v. Solon, 598 F. Supp. 1505. (1984) #2 Constitutional law 251.5 "Unreasonable delay, whether it be negligence or intentional by government agencies is a constitutional violation, there is no lawful reason for delays," This ruling made by Federal Judge Alvin I. Krenzler (ret) was made in the very court room we were in. Judge Krenzler is the former father in law of defense attorney Synenberg and a former member of the CSU board.

See Carson Harbor Village Ltd. v. City of Carson, 37 F. 3d 468, 469 (1994) The 9th Circuit Appeals Court #7 eminent domain 2(1)

"When government authorizes an unwanted physical occupation of an individual's property, taking clause generally requires compensation U.S.C.A. Const. Amend. 5. #11 eminent domain 2(1) "as -applied" challenge to government regulation, as a regulatory taking, involves claim that particular impact of government inaction on specific piece of property requires payment of just compensation. U.S.C.A. Const. Amend. 5

The rights of real estate

1) the right to exclude
2) the ability to mortgage
3) the right to occupy and use
4) right to sell when I want for market value
5) the right to rent or lease for market value
6) the right to covenant

Called the fee simple bundle of rights, I have included only some of the 14 sticks. I reference Ohio Real Estate by Synek and Harwood updated pg. 44

"whenever a stick is removed from the fee simple bundle, it creates an impediment to the free and clear

ownership and use of the property. These impediments to title are called encumbrances. An encumbrance is defined as any claim, right, lien, or liability that limits the fee simple title to property."

In *Washington Medical Center v. U.S.*, 54 L. Ed. 2d 188 (1977) the Court made the legal definition of property."... but to the right and interest in an object. ...the unrestricted and exclusive right to a thing, the right to dispose of it in every legal way, to possess it, use it, and to exclude everyone else from interfering with it." Also *see* Bk. 63C Am. Juris. 2d pg. 66 and Bk. 26 Am. Juris. 2d pg. 594.

Ohio real estate deeds contain (5) covenants and Warranties

I refer this Court to Ohio laws 5302.05 and 5302.06, general warranty deed and general warranty covenants.

Covenant of seizing; I am the owner and possessor of the property.

Covenant of Quiet enjoyment; I guarantee the buyer they will not be disturbed after they take possession. (the map issue ends that covenant)

Covenant against Encumbrances; urban renewal and the developmental plans of a State agency are certainly an encumbrance or cloud.

Covenant of Further Assurances; I must guarantee the grantee's title

Warranty Forever; I must bear the expense of defending the grantees title. (even in eminent domain litigation)

In theory, a buyer will not lose in value in an eminent domain case. That is mostly theory. Earlier, I cited the *Bence* case (city of Cleveland). The taxpayers of Cleveland lost $136,000.00 in one year. In a private deal, two people reach value acceptable to both and each walk away happy. But CSU can step in at will, and the jury is instructed to only find fair

market value. Many reasons private people do things are not considered in value for eminent domain.

With legitimate eminent domain, no one can stop it. The only issue left is value. The value issue is hazardous. The cost is high for both sides but CSU can spread that cost among the taxpayers of Ohio. A prejudicial control CSU exerts is when to buy or wait. Because that jury sets a value that no appraisal can overcome, fear of the verdict is controlling unless the land is necessary now. In Ohio, the jury will also decide value to the remainder and damages to the remainder, more expense to CSU. No delay and damages do get paid. Without a firm rule on delay, this issue will remain forever an open book.

Ohio law is clear on delay. I reference Bk. 38 Ohio Juris.3d pg. 311 #215 Advancement of proceedings, Ohio revised code 119.01 to 119.13, also 719.31 and 163.22. as well as #216 Avoidance of delay in proceedings R.C. 163.13. "the court is directed to give preference to all proceedings under such applications over all other cases,..." No delay.

Defense attorney Synenberg admits in his closing that CSU has nine (9) other properties left to acquire. What about them? And he also admits to the urban renewal ordinance and the CSU area (Tr. pg. 1036,14 to pg.1037,5)

If this Court wishes, it can treat this case as a request for a writ of Mandamus as allowed under your rule 20 (a) issued against CSU, hopefully in Akron, Ohio Federal Court. The Federal Judges in Cleveland are CSU law school graduates or indebted to the school as what happen to me at trial.

If the Certiorari is granted, can you please appoint a attorney for me as is allowed under your rule 39 (7)? CSU caused me to loose my home condominium and business property at the sheriff sale, I have a deficiency judgment against me for $64,345.91 plus interest from 8/30/2000, on the balance due FirstMerit bank, and attorneys Rich sends me

statements saying I still owe them almost $15,000.00 from work they claim they did.

I ask you to remember that I am the case where District Judge Lesley Brooks Wells allowed my attorney Larry Rich to withdraw from this case (1) day after motioning the court, and even before I knew he wanted out, in direct violation to her own court rules. (rule 83.9) No attorney would take my case because Judge Wells did not permit the brief reopening of pleadings and a short discovery period so as to not expose the new attorneys error and omission insurance to the incomplete work of Rich. One for sure mistake was the amended pleading of Rich forgetting to demand a jury trial. I complained to Judge Wells when she allowed CSU to drop their jury demand, (4) weeks before trial. I wanted a jury trial.(*see* Trial docket) The judge denied me a jury trial. After trial and her verdict, (not a jury), I found out that judge Wells **was, is, and has been** since 1992, employed by the defendant, CSU as a adjunct professor at both the law school and urban studies college. (see Directoy of Federal Court Guidelines volumn 2 Christine Housen Managing Editor Aspen Law & Business 2000-3 supplement pg. 6c-178 and also The American Bench, judges of the nation eleventh edition 2000/2001 Forster-Long publishing pg. 2014)

The U.S. Congress passed law title 28 U.S.C. 455 Disqualification of justice, judge, or magistrate, stating ..." shall disqualify himself... where impartially might be reasonably be questioned." Every lay person I tell of the Judges employment conflict asks how the Federal Judicial system including the Appeals Court could allow such a thing to happen. Judge Wells took an oath to support the United States Constitution. Attorneys have read the trial transcript, shake their heads and walk away and want no part of this case.

I am not an attorney or have ever been to law school or taken the Bar.

Respectfully Submitted,

William B. Cook
pro se
P.O. Box 24624
Lyndhurst, Ohio 44124-0624
(440) 953-9130 voice and fax

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. 1:98 CV 0351

[Filed July 10, 2000]

WILLIAM COOK	)
Plaintiff,	)
	)
v.	)
	)
CLEVELAND STATE	)
UNIVERSITY,	)
Defendant.	)
	)

JUDGMENT ENTRY

JUDGE LESLEY WELLS

This Court, having previously entered its findings of fact and conclusions of law, hereby enters judgment in favor of defendant Cleveland State University and against plaintiff William Cook, Mr. Cook shall pay costs.

IT IS SO ORDERED.

/s/_____
UNITED STATES DISTRICT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. 1:98 CV 0351

[Filed July 10, 2000]

WILLIAM COOK *Plaintiff*,	)
v.	)
CLEVELAND STATE UNIVERSITY, *Defendant*.	)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

JUDGE LESLEY WELLS

On 11 February 1998, plaintiff William Cook filed a complaint against defendant Cleveland State University ("CSU"), alleging CSU had taken his property at 2210 Payne Avenue in Cleveland, Ohio without proper compensation in violation of Art. I, §9 of the Ohio Constitution, the 5th and 14th Amendments to the United States Constitution, and 42

U.S.C. §1983. He further alleges CSU had violated his rights to both substantive and procedural due process and the equal protection clause. Mr. Cook seeks a writ of mandamus compelling CSU to commence appropriation proceedings with respect to his Payne Avenue property. In the alternative, he seeks a permanent injunction "prohibiting and forever barring [CSU] from depriving [Mr. Cook] of his free and undisturbed use and quiet enjoyment of his property ... and forever barring ... CSU from confiscating and/or condemning [Mr. Cook's] property." (Amended Cplt. At 6-7.)

With respect to his takings argument, Mr. Cook set forth three claims. First, he contends CSU has taken his property by "freezing" it i.e., by making "it known through publications, newspaper articles, maps and the University and other means that it intended to purchase the Plaintiff's property located at 2210 Payne Avenue, Cleveland, Ohio." (Amended Cplt. ¶ 6.) As a result, Mr. Cook argues, he has been unable to find tenants who are willing to pay the market rental rate, and "no bank or lending institution will grant or guarantee any loan to any person to buy, build or construct or improve any building on the property owned by Plaintiff." (Amended Cplt. ¶¶ 7, 13, 20.)

Second, Mr. Cook claims his property has been taken by virtue of the fact that it lies within an urban renewal zone and that the City of Cleveland had designated CSU as a redeveloper in that zone.

Third, he maintains CSU has (a) published maps showing his property as part of CSU's Parking Lot M and (b) failed to erect physical barriers which would adequately differentiate that parking lot from his own property. According to Mr. Cook, these acts and/or failures to act constitute a physical taking insofar as they cause people to

walk over his property, to drive over his property when exiting Parking Lot M, and to park on his property by mistake.

Following a seven-day bench trial, with the plaintiff proceeding pro se, the following findings of fact and conclusions of law are issued pursuant to Fed. R. Civ. P. 52 (a).

I. Findings of Fact

1. The defendant, CSU, is a state-funded institution of higher education located in downtown Cleveland, Ohio.

2. The plaintiff's property at issue in this case is located at 2210 Payne Avenue in Cleveland, Ohio. (Amended Cplt. ¶ 3.)

3. There is presently a service garage on the plaintiff's property and room for parked cars. (Pl's Ex. T-10.)

4. The property lies on the southeast corner of East 22nd Street and Payne Avenue and the northern edge of CSU campus.

5. In 1969, Mr. Cook purchased a business on the property for $25,000 and rented the land on which it stood. (Trial Transcript [hereinafter "Tr."] at 117-18.)

6. In 1976, he purchased the property for approximately $62,00.[1] (Tr. At 123-24, 132.)

7. In September of 1985, Mr. Cook began leasing the property to others, allegedly because "business was bad." (Tr. At 130-31.)

8. In 1970, the City Council of Cleveland, Ohio passed Ordinance 969-A-69 which designated the Central Core area of Cleveland as an urban renewal zone and thereby made it eligible to receive federal assistance. (Pls. Exs. 1-09 to 1-12, 1-13 to 1-14; Tr. at 2.)

9. Joseph Sidoti, Assistant Commissioner for the City of Cleveland, and a credible witness, established that the Central Core area encompasses a large section of downtown Cleveland, including, but not limited to, the area around the CSU campus and Mr. Cook's property. However, the area around CSU has never been the subject of an urban renewal project, and the City of Cleveland has never applied for federal money to develop it. (Tr. at 2-11.)[2]

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[1] FirstMerit Bank allegedly foreclosed on Mr. Cook's property and attempted to sell it, while this trial was in progress. A sheriff's sale was scheduled to take place on 22 May 2000. (Pla.'s Mtn. for TRO.)

[2] Mr. Cook argued at trial that CSU had been designated a redeveloper of the Central Core area. However, Mr. Sidoti testified that Ordinance 969-A-69 did not designate CSU as a redeveloper in the Central Core area (Tr. 9-10), and Mr. Cook submitted no evidence to the contrary.

10. Over the past several decades, CSU has purchased land contiguous to or nearby the University for possible future expansion. (Tr. at 14.)

11. In addition, CSU has at various times published "Master Plans." Some maps set forth in these Master Plans and published in various newspaper accounts designate the area in which Mr. Cook's property lies for possible expansion. (Pl's Exs. 502, 504, 556.)

12. Christine Jackson (CSU's Vice President of Finance Administration) and Robert Criminger (CSU's Executive Director of Facilities Management) were both credible witnesses, and both established that CSU's various Master Plans are merely "blueprints" for the campus's future development and are always subject to change. (Tr. 14-15, 18, 114-15.)

13. According to CSU's policies and the State of Ohio's guidelines, before CSU acquires a piece of property, it must obtain appraisals from two MAI-certified appraisers. CSU may then offer the property owner no more than the average of the two appraisals plus 10%. (Tr. at 111.) If the seller wishes to obtain a price beyond the appraised values plus 10%, CSU will typically do without the property rather than institute eminent domain proceedings. Mr. Criminger testified that CSU tries "to work with people who are willing to sell their property and we do that most of the time. We do not have any desire to use eminent domain,

and we only use that in an extreme circumstance." (Tr. at 12-13.)

14. CSU has conducted six appraisals of Mr. Cook's property - two in 1982, two in 1984, and two in 1988. (Tr. 19-21.)

15. In 1985, CSU offered Mr. Cook $130,000.00 for his property. (Tr. at 22-23, 122.) Mr. Cook testified he turned it down because he wanted "to bargain the price up." (Tr. at 122.)

16. Although he had both the right and the opportunity to hire an independent appraiser to value his property, Mr. Cook did not do so. (Tr. at 126.)

17. Mr. Cook has never signed a contract with a real estate broker, although he did attempt to sell his property in 1984 for between $52,000 and $53,000. (Tr. at 122-23; Cook Dep. At 22.)

18. CSU has not interfered with Mr. Cook's ability to sell his property on the open market. (Tr. at 127-28.)

19. In 1995, Mr. Cook began leasing his property to James Wade for $1,000 per month. Mr. Wade's original lease ran from 1995 to 2000, with an option to renew for an additional five-year period. In 2000, Mr. Wade exercised the option and now has a lease until 2005, with rent in the amount of $1,250 per month. (Tr. at 105-06.)

20. Mr. Wade operates an All-Pro Muffler & Brake shop on the property and rents parking spaces to the employees of several nearby businesses. (Tr. at 77-78, 101.)

21. Mr. Wade was a credible witness.

22. Mr. Cook has never asked Mr. Wade to purchase the property. (Tr. at 109.)

23. Mr. Cook's property is on a corner immediately adjacent to CSU's Parking Lot M. At several different times from approximately 1988 to approximately 1999, CSU produced schematic visitors' diagrams or "maps" which incorrectly showed the general area of Mr. Cook's property as part of Parking Lot M. (Tr. at 27-29; Pl's Ex. 7-8.)

24. In 1985, 1986, 1987, and 1998, CSU produced schematic visitors' "maps" which accurately showed Mr. Cook's property as being distinct from Parking Lot M. (Def's Exs. D-G.)

25. All of these "maps" were designed to give visitors to CSU a general sense of the location of key CSU buildings and parking lots. They are schematic representations, are not drawn to scale, and are meant to designate general areas, not to provide precise information. (Pl's Ex. 7-8; Def's Exs. D-G; Tr. at 116.)

26. Although Mr. Cook knew some of the CSU visitor "maps" incorrectly showed the precise area of his property under the designation for

adjoining Lot M, he never contacted CSU to complain. (Tr. at 31.)

27. In reality, CSU's Parking Lot M is visually distinct and physically separate from Mr. Cook's property. Two sides of Mr. Cook's corner property - the north and west sides - are bounded by public streets and sidewalks. A chain-link fence and a highway guardrail also run along the west side. The fence and rail both continue along the south side of the property until they reach the back, southwest corner of the service garage. The back wall of the service garage blocks the remainder of the shared southern boundary between Mr. Cook's property and CSU's Parking Lot M. Turning the corner, the side wall of the garage blocks approximately one half of the shared eastern boundary. The other half of the eastern boundary is separated by a series of railroad ties along which cars can be parked and by an approximately six-inch height difference between the two properties. (Pl's Ex. T-10; Def's Ex. A.)

28. Neither Mr. Cook nor his tenants have chosen to replace or supplement the railroad ties along the only "open" segment between the properties with a more visible or a more permanent barrier. (Tr. at 106-09; 135-36.)

29. CSU has never interfered with the ability of either Mr. Cook or his tenants to fence or otherwise more clearly designate the property line. (Tr. at 106-07.)

30. Occasionally, CSU students and/or staff have parked on Mr. Cook's property, have walked across the property after parking on Lot M, or have driven over Mr. Cook's property in order to exit Lot M. (Tr. at 90-92, 97-98.)

31. No evidence was presented that these transient actions have damaged Mr. Cook's property or caused Mr. Cook to receive less rent from his tenants. (Tr. at 107-09.)

32. Mr. Wade stated he was not particularly disturbed when people parked on or walked across the property except for those occasions when such parkers prevented him from locking his gate at night. (Tr. at 90-93.)

33. In addition, Mr. Wade testified he has alleviated problems by renting parking spaces to employees of nearby businesses and having them park their cars along the boundary between Mr. Cook's property and Parking Lot M so as to create a barrier along the boundary presently blocked on the CSU side by railroad ties. (Tr. at 97, 104-05.)

34. Mr. Wade has put up a sign saying "parking available". The sign hangs on the side of the service garage facing 22nd Street. (Tr. at 101.)

35. On 2 April 1996, Mr. Cook received a loan for $150,000 from First National Bank of Ohio, using the property at 2210 Payne, an assignment of tenant lease rents, and a second mortgage of $25,000 on his residence as

collateral. (Pl's Mtn. for TRO, Docket No. 97.)

36. In 1999, Mr. Cook's former attorney hired Julian Vanni to do a retrospective appraisal of Mr. Cook's property for the purposes of litigation. (Pl's Ex. 555.)

37. Mr. Vanni was not a credible witness.

38. Mr. Vanni utilized three methods of valuation: the cost approach, the income approach, and the sale comparison approach. (Pl's Ex. 556.)

39. According to Roger D. Ritley, CSU's expert, an appraiser who used either the cost approach or the income approach to appraise Mr. Cook's property would reach inaccurate and misleading conclusions. (Ritley Tr. at 6-10.)

40. In addition, Mr. Vanni's report contained numerous significant errors. Among other things, (a) Mr. Vanni had compared Mr. Cook's service garage to properties in different zoning areas and, in one instance, to property in a different town; (b) he had used secondary rather than primary sources to gather comparison data; (c) partly as a result, he had at times used wholly inaccurate information to compute the cost-per-foot of other properties; and (d) his appraisal assumed Mr. Cook's property was a Class A property when it is a Class C property. (Tr. at 32-38, 47-50, 7174.)

41. According to Mr. Ritley, such errors would cause an appraiser to reach inaccurate and misleading conclusions. (Ritley Tr.)

42. Mr. Vanni admitted his appraisal contained numerous errors and stated those errors had resulted in part because he had "rushed" to complete it. (Tr. at 73.)

II. Conclusions of Law

A. This Court has jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1367.

B. To prevail on his taking claims under either the United States or the Ohio Constitutions, Mr. Cook must show CSU interfered with his property in more than a minimal way. *See Amen v. City of Dearborn,* 718 F.2d 789, 795-96 (1983) (setting forth elements of takings claim); *State v. Whitehead*, 70 Ohio St.2d 37 (1982) (setting forth elements of takings claim).

C. Mr. Cook has failed to establish that CSU has caused a permanent, physical invasion of his property. Although CSU students or staff do occasionally park on, walk over, or drive across Mr. Cook's property, these actions are transient and occur only sporadically. They thus do not constitute a permanent, physical invasion of his land. In addition, CSU cannot be held accountable for the personal transportation decisions of its students or staff

- particularly since Mr. Cook himself could have resolved any problems he believes exist by erecting a simple barrier between his property and Parking Lot M. *See Loretta v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Sanguinetti v. United States*, 264 U.S. 146, 149 (1924) (to be a taking, the government's actions must "constitute an actual, permanent invasion of the land, amounting to an appropriation of, and not merely an injury to, the property").

D. Mr. Cook has also failed to establish that CSU deprived him of all - or even some - of the economically viable usages of his land. Even though CSU's Master Plans may have designated the area in which Mr. Cook's property lies as an area into which it might expand, Mr. Cook now leases out his property for $1,250 per month; a bank loaned him $150,000 using the Property as partial collateral; he has chosen not to list the Property with a real estate agent; and in 1985 he voluntarily turned down CSU's offer of $130,000 for the Property. *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992). "A taking does not occur merely because governmental action burdens or restricts some particular right or interest in a parcel of land. Rather, before a taking occurs the government must deny the owner all or an essential use of his property ... The mere decline in property values does not, per se, constitute a taking requiring compensation." *Amen* 718 F.2d at 795-96; *see also Sayre v.*

City of Cleveland, 493 F.2d 64, 69 (6th Cir. 1974) (declining to accept "the broad proposition ... that there is an unconstitutional taking whenever a city in the conduct of its urban renewal program commits acts that lead to the devaluation of property ... particularly where the city ... has neither initiated eminent domain proceedings, evidence any intent to begin procedures, or physically invaded the property"); *Woodland Market Realty Co. v. City of Cleveland*, 426 F.2d *955*, 958 (6th Cir. 1970) (holding a property owner was not entitled to compensation even though his property was inunediately adjacent to an urban renewal area and the property had declined in value. "[A]ctions done in the proper exercise of governmental powers which do not directly encroach upon private property, though they may impair its use or value, do not amount to a taking of such property within the meaning of the constitutional provision."); *State v. Whitehead*, 70 Ohio St.2d 37, 39 (1982) (holding a taking exists only if the plaintiff can show "a substantial or material interference with property rights, as well as substantial or special injury. 'Any actual and material interference with such (property) rights which causes special and substantial injury to the owner, is a taking of his property'" (internal citations omitted).)

E. Mr. Cook has failed to establish that CSU has violated his right to substantive due process. *See Washington v. Glucksberg*, 521 U.S. 701,720 (1997).

F. Mr. Cook has failed to establish that CSU has violated his right to procedural due process. *See Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).

G. Mr. Cook has failed to establish that CSU has violated his right to equal protection. *Pennell v. City of San Jose*, 485 U.S. 1, 14 (1988).

H. Mr. Cook has failed to establish CSU violated 42 U.S.C. § 1983. *Ellison v. Garbarino*, 48 F.3d 192, 194 (6th Cir. 1995) (stating petitioner bringing claim under 42 U.S.C. §1983 must show "the deprivation of a right secured by the Constitution or laws of the United States").

III. Conclusion

Because Mr. Cook has failed to establish any of the claims raised in his amended complaint, judgment is entered in favor of defendant Cleveland State University and against plaintiff William Cook. Mr. Cook shall pay costs.

IT IS SO ORDERED.

/s/_____
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CASE NO. 00-3972

[Filed June 15, 2001]

WILLIAM COOK, III *Plaintiff-Appellant*,	)
v.	)
CLEVELAND STATE UNIVERSITY, *Defendant-Appellee*.	)

ORDER

Before: RYAN and COLE, Circuit Judges; MARBLEY, District Judge.*

William H. Cook, III, appeals a district court order granting judgment for the defendant in his action filed under 28 U.S.C. §1331. The case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral

argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary and injunctive relief, Cook sued Cleveland State University (CSU), alleging that CSU had engaged in a constructive "taking" of his property in violation of the Fifth Amendment. Following a bench trial, the district court granted judgment in favor of CSU. *Cook v. Cleveland State Univ.*, 104 F. Supp. 2d 752 (N.D. Ohio 2000). Cook has filed a timely appeal.

Upon review, we conclude that the district court properly granted judgment in favor of the defendant. This court reviews de novo the district court's legal conclusions following a bench trial, but reviews the district court's factual findings for clear error. *Kalamazoo River Study Group v. Menasha Corp.*, 228 F.3d 648, 651 (6th Cir. 2000).

While Cook raises a variety of arguments, he is arguing, in essence, that CSU engaged in a taking of his property in violation of the Fifth Amendment. Governmental action that impermissibly burdens an individual's property constitutes a taking, and the government must compensate the owner for the loss of the property. *Amen v. City of Dearborn*, 718 F.2d 789, 794 (6th Cir. 1983). The government can violate the Taking Clause by denying an owner dominion over his property even without invoking the formal power of eminent domain. *Id.* However, a taking does not occur merely because the governmental action burdens or restricts some particular right or interest in a parcel of land; rather, before a taking occurs, the government must deny the owner all or an essential use of his property. *Id.* The mere decline in property value does not constitute, per se, a taking requiring compensation. *Id.* at 796. Cook has not challenged any of the district court's factual findings on this claim, and these facts reveal that CSU's actions did not so impact the

value of Cook's property as to constitute a taking.

Cook also argues that the City of Cleveland placed his property in an urban renewal district, which constitutes an impermissible taking. No taking of property in an urban renewal district occurs, even if the property decreases in value, unless there is some action by the governmental body to appropriate, physically invade, or restrain the use of the property. *See Sayre v. City of Cleveland,* 490 F.2d 64, 70 (6th Cir. 1974). Since the City of Cleveland has taken no action against Cook's property beyond placing it in the urban renewal district, his argument is without merit.

Additionally, Cook argues in a conclusory manner that CSU's actions violated his substantive and procedural due process rights and his equal protection rights. Since his claims are conclusory and unsupported by any facts or evidence, the district court properly dismissed these claims. *Kensu v. Haigh,* 87 F.3d 172, 175-76 (6th Cir. 1996).

Cook also argues that the district judge should have recused herself because she is a graduate of CSU. A review of the record and docket sheet shows that Cook never filed an affidavit accusing the district judge of bias and seeking her recusal. Unless exceptional circumstances exist, this court normally will decline to address an issue not first raised in the district court. *Enertech Elec., Inc. v. Mahoning County Comm'rs, 85* F.3d 257, 261 (6th Cir. 1996). This general rule bars an appellate court from considering a recusal issue that was not initially raised in the trial court. *In re Eagle-Picher Indus., Inc.,* 963 F.2d 855, 862-63 (6th Cir. 1992). As no exceptional circumstances exist in this case, this court declines to consider the issue.

Cook next argues that the district court should not have granted his counsel permission to withdraw from the case. Cook asserts that the court should have assured that he had new counsel before permitting prior counsel to withdraw. Since Cook had no constitutional right to counsel in this civil case, *Lavado v. Keohane,* 992 F.2d 601, 605-06 (6th Cir. 1993), his argument is without merit.

Cook argues that the district court denied him his right to a jury trial. However, the record reveals that Cook never timely requested a jury trial. Fed. R. Civ. P. 38(d) provides that a party waives a trial by jury in a civil case by failing to file timely and serve a jury demand. Such a waiver is complete and binding even though it may have been inadvertent and unintended. *See Misco, Inc. v. U.S. Steel Corp.,* 784 F.2d 198, 203 (6th Cir. 1986); *Washington v. New York City Bd. of Estimate, 709* F.2d 792, 797-98 (2d Cir. 1983). The right to a jury trial also may be waived by failing to object to a bench trial and subsequently fully participating in the trial. *Preferred RE, Inc. v. Am. Prescription Plan, Inc.,* 46 F.3d *535,548* (6th Cir. 1995); *United States v. 1966 Beechcraft Aircraft Model King Air A90,* 777 F.2d 947, 950-51 (4th Cir. 1985). Since Cook participated in and never objected to the bench trial, he waived his right to a jury trial.

Lastly, Cook argues that the district court improperly quashed his subpoenas for several witnesses. This court will not disturb a district court's decision to quash a subpoena unless the court's ruling affected fundamental rights. *United States v. Mohney,* 949 F.2d 1397, 1409 (6th Cir. 1991). We conclude that the court's decision did not affect Cook's fundamental rights.

Accordingly, this court affirms the district court's judgment. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/_____
Clerk